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of the clerk's records by means of reference to the indexes which ordinarily meets the tests of reasonable care and diligence of careful and capable lawyers is insufficient, and, where they failed to discover such survey from records of a county formerly including the land until after trial, sufficient diligence is not shown to warrant a new trial.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 475.]

**2. New Trial (§ 167\*)—Diligence Affecting Equitable Action for New Trial for Newly Discovered Evidence.**—Where, in a trial, the importance of the discovery of a survey not in the chain of title of either the plaintiff or defendant was known to plaintiff for at least a year before final trial, and the evidence shows that it could have been discovered by the exercise of diligence reasonably commensurate with that required, plaintiff is not entitled to a new trial for the discovery of such evidence.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 475.]

**3. Judgment (§ 444\*)—Equitable Relief against Judgment Based upon Perjured Testimony.**—A court of equity will not grant relief against the enforcement of a law judgment on account of perjured testimony in the trial, unless it appears that without such testimony the result ought to have been different and that the fact of its falsity could not have been discovered by the exercise of proper diligence on the part of the complaining party.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 475.]

Error to Circuit Court, Highland County.

Suit by Lewis McClung against C. C. Folks to enjoin the enforcement of a judgment. From a decree dismissing the bill after sustaining demurrer thereto, the plaintiff brings error. Affirmed.

*Rudolph Bumgardner*, of Staunton, and *John M. Colaw*, of Monterey, for plaintiff in error.

*Timberlake & Nelson* and *Curry & Curry*, all of Staunton, and *Andrew L. Jones*, of Monterey, for defendant in error.

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SCHOOL BOARD OF CITY OF HARRISONBURG *v.*  
ALEXANDER.

Nov. 20, 1919.

[101 S. E. 349.]

**1. Time (§ 9 (8)\*)—Excluding Last Day in Computing Time for Appeal.**—Where petition for writ of error is presented on same day of same month as that on which judgment was awarded during preceding year, the writ will be dismissed, the petition, under Code

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

1919, § 5, cl. 8, restoring Code 1904, § 5, as it read prior to amendment by Acts 1916, c. 290, not having been presented within a year after date of judgment required by Code 1904, §§ 3455, 3474.

[Ed. Note.—For other cases, see vol. 1, p. 497 and vol. 13, p. 208 Va.-W. Va. Enc. Dig.]

**2. Time (§ 9 (8)\*)—Excluding First Day in Computing Time for Appeal.**—Where judgment was awarded February 14, 1918, petition for writ of error presented February 14, 1919, was presented within the year from date of judgment required by Code 1904, §§ 3455, 3474 under Code 1904, § 5, as amended by Acts 1916, c. 290.

[Ed. Note.—For other cases, see vol. 1, p. 497 and vol. 13, p. 208 Va.-W. Va. Enc. Dig.]

**3. Eminent Domain (§ 191 (3)\*)—Sufficiency of Petition as Stating Purpose of Taking.**—School board's petition for condemnation of land, stating "that it is necessary for the purposes of your petitioner that it acquire said lot" held to sufficiently state purpose for which condemnation was sought under Code 1904, § 1105f, cls. 4, 25.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 101.]

**4. Eminent Domain (§ 45\*)—"Dwelling House" Property Which May Be Taken.**—A building which had been erected as a residence and used as such until temporarily leased to school board for use in part for kindergarten work and in part as school janitor's residence, and which had been purchased by person who expected to occupy it as a residence as soon as she could get possession, was a dwelling house within statute on eminent domain.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Dwelling House. For other cases, see 5 Va.-W. Va. Enc. Dig. 73.]

**5. Eminent Domain (§ 7\*)—Based Only on Statute.**—School board's right to condemn land exists only by virtue of statute.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 70.]

**6. Eminent Domain (§ 6\*)—Delegation of Power.**—The state has the right to take private property for a public use, or to delegate such right to subordinate agencies to be exercised in proper proceedings for the public good.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 70.]

**7. Eminent Domain (§ 40\*)—Public Use for School Purpose.**—Use of property for school purposes held a public use.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 77.]

**8. Eminent Domain (§ 1\*)—Compliance with Statute Necessary.**—The taking of private property is a matter of serious import, and is not to be permitted, except where the right is plainly conferred and the manner of its exercise has been strictly followed.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 71.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**9. Eminent Domain (§ 6\*)—Delegation of Power; Restrictions.—**

The state may grant the power generally to condemn any property for a public use, or it may place such restrictions upon the power, the manner of its exercise, or the character of the property that may or may not be taken as it pleases; and, when such restrictions are imposed, they must be obeyed.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 71.]

**10. Constitutional Law (§ 70 (1)\*)—Encroachment of Courts on Legislative Power.—**The courts cannot enlarge a power which the Legislature has restricted.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 180.]

**11. Statutes (§ 225½\*)—General Acts Controlled by Special.—**Powers conferred by a general statute may and will be restrained by special enactments.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 749.]

**12. Statutes (§ 225\*)—Construction.—**In cases of doubt, statutes in pari materia should be read and considered together.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 761.]

**13. Eminent Domain (§ 45\*)—Dwellings, Yards, Gardens and Orchards May Not Be Taken for Schools.—**Under Code 1904, §§ 1488, 1522, 1538, cl. 15 and in view of legislative history of such statutes city school board has no power to condemn for school purposes a dwelling, yard, garden, or orchard, regardless of quantity of land to be taken, notwithstanding its power to condemn "any land" under section 1105f, cl. 25, as amended by Acts 1912, c. 121; such power being restricted by former statutes.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 75.]

Error to Circuit Court, Rockingham County.

Condemnation proceedings by the School Board of the City of Harrisonburg to condemn land belonging to Mollie A. P. Alexander. Judgment sustaining owner's demurrer to petition and refusing to appoint commissioners, and petitioner brings error. Affirmed.

*John Paul*, of Harrisonburg, for plaintiff in error.

*George N. Conrad* and *George S. Harnsbarger*, both of Harrisonburg, for defendant in error.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.